

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MACHAEL T. TYNDAL,

Plaintiff

VS.

MICHAEL SMITH,

Defendant

NO. 5: 05-CV-66 (WDO)

PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE

ORDER DENYING MOTION TO PRODUCE EVIDENCE

Plaintiff herein has requested this court to subpoena a videotape of the incident alleged to have occurred on December 14 and 15 of 2004. Tab #40. The defendant has responded to that motion, asserting that no such videotape exists because the car defendant Smith was driving at that time was not equipped with a video camera. Tab #42. Absent evidence to the contrary, the court must accept defendant's response as being true. Since no videotape exists, the plaintiff's motion (Tab #40) must be **DENIED**.

SO ORDERED, this 13th day of FEBRUARY, 2006.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr.".

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE